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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,983

08/17/2005

Nathan Charles Brown

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EXAMINER

CHUI, MEI PING

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

12/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/521,983	Applicant(s) BROWN ET AL.	
	Examiner MEI-PING CHUI	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/21/2005 and 08/28/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Action

The new examiner of record acknowledges the receipt of Amendments/Remarks filed on 04/14/2008. Currently, claims 1-15 are pending in the application; claims 1 and 13-14 have been amended; claims 2-10 and 12 are originally presented; claim 11 has been cancelled; and claim 15 is newly added.

Receipt of Information Disclosure Statement filed on 11/21/2005 and 08/28/2008 are acknowledged. They have been considered and placed in the file.

Upon further search and consideration, the examiner has new grounds of rejection. Accordingly, this action is **NON-FINAL**.

Status of Claims

Accordingly, claims **1-15** are presented for examination on the merits for patentability.

Rejection(s) not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

For claims 2-10, 12 and 15, delete the article “An” at the beginning of each dependent claim and insert the article --- The--- instead.

Response to Arguments

Applicants’ arguments filed on 04/14/2008 with respect to claims 1-15 have been

Art Unit: 1616

considered but are moot in view of the new ground(s) of rejection.

New Ground(s) of Rejection

Claim Rejections - 35 USC § 112 second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 9-10 and 13-14 are rejected 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) Claim **9** is rejected because the claim recites "an aerosol composition according to claim 1, comprises a bulking or suspending agent". However, claim 1 does not recite the composition comprises a bulking or suspending agent. Therefore, the recitation of this element in claim 9 lacks antecedent basis. The term "further" is required in the claim in order to include any additional element that is not recited in claim 1.

Likewise, claim **10** recites "an aerosol composition according to claim 1, comprises a volatile silicone". However, claim 1 does not recite the composition comprises a volatile silicone. Therefore, the recitation of this element in claim 10 lacks antecedent basis.

The term "further" is required in the claim in order to include any additional element that is not recited in claim 1.

(2) Claim **13** is rejected because it recites "a method of manufacture of a suspension antiperspirant aerosol composition"; however, the claim does not set forth any step(s) involved in

Art Unit: 1616

the method, it is unclear what method applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. See MPEP, 2173.05(q).

(3) Likewise, claim **14** recites “a method of reducing perspiration and giving low visible deposits comprising the application to the human body of a suspension antiperspirant aerosol composition”; however, the claim does not set forth any step(s) involved in the method, it is unclear what method applicant is intending to encompass in said application. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. See MPEP, 2173.05(q).

In addition, claim 14 recites “a method comprising the application”; however, the precedent body of the claim does not recite the term "an application". Therefore, the recitation of the term "the application" in the latter part of the claim lacks antecedent basis.

For examination purposes, the Examiner takes the position that the claims, which have been rejected under 35 U.S.C. 112, second paragraph set forth above, will be given their plain meaning as recited.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1616

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall, P. J. (U. S. Patent No. 5,840,289).

Applicants Claim

Applicant claims a suspension antiperspirant aerosol composition comprising (i) a milled activated aluminum chlorohydrate (AACH) having non-hollow particles, (ii) a carrier fluid comprising a masking oil of viscosity 10^4 mm²/s or greater and (iii) a propellant gas. Applicant also claims a method of manufacture a suspension antiperspirant aerosol composition and a method of reducing perspiration and giving low visible deposits comprising an application to the human body of a suspension antiperspirant aerosol composition.

Determination of the scope and content of the prior art
(MPEP 2141.01)

Hall, J. P. teaches a suspension antiperspirant aerosol composition suitable for topical application to human skin and a method of utilizing said suspension antiperspirant aerosol composition to reduce visible whitening (column 1, lines 7-8 and 48-54).

Art Unit: 1616

Hall, J. P. teaches that the composition comprising (i) 1-30 % by weight of non-hollow milled activated aluminum chlorohydrate, (ii) a liquid masking agent, and (iii) 30-90 % of a propellant (column 1, lines 57-62). More specifically, Hall, J. P. teaches that the milled activated aluminum chlorohydrate (**AACH**) comprises non-hollow particles and has a continuous refractive index of 1.52 to 1.57. Hall, J. P. also teaches that the aerosol active AACH is in the form of particles of mean diameter (e.g. 20-30 μm), which is produced by milling down larger particle size particles (e.g. 100 μm) to smaller mean particle size particles (e.g. 30 μm) to result in reduced whitening effect (see column 3, lines 49-53; column 4, lines 6-12 and 36-38).

Hall, J. P. further teaches that the liquid masking agent in the composition has a refractive index of 1.40 to 1.57, which can help to eliminate visible whitening by matching its refractive index with the particle shell of the AACH (column 2, lines 10-11 and column 3, lines 55-59).

In addition, Hall, J. P. teaches that the liquid masking agent can also serve as a diluent, lubricant or spreading agent to facilitate uniform distribution of the antiperspirant material on the skin (column 2, lines 35-37), and the liquid masking agent, which has the refractive index of 1.40-1.57, can be selected from benzoate esters or phenyl silicone (column 2, lines 16-19, 45-49). Further, Hall, J. P. teaches that the liquid composition can comprise a volatile silicone fluid (column 2, lines 50-52a and column 4, line 50). Hall, J. P. also teaches that in order to prevent caking or settling out of the antiperspirant in the emollient liquid carrier fluid, a bulking or suspending agent is preferably incorporated into the composition (column 2, lines 56-59).

Hall, J. P. teaches that the composition comprises a propellant gas, which can be any liquefiable gas known in the art for use in propellant driven aerosol container, in an amount less than 90 % by weight (column 2, line 66 to column 3, line 5).

Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)

Hall, J. P. teaches a suspension antiperspirant aerosol composition to reduce visible whitening comprising (i) 1-30 a non-hollow milled activated aluminum chlorohydrate, (ii) a liquid masking agent, and (iii) a propellant, and other ingredients, as instantly claimed. Hall, J. P. also teach that the masking agent has a refractive index of 1.40 to 1.57, which can be matched with the milled AACH having a refractive index of 1.52 to 1.57 to help to eliminate or reduce visible whitening caused by the antiperspirant. However, Hall, J. P. does not specifically teach that the masking agent with refractive index of 1.40 to 1.57 has viscosity of 10^4 mm²/s or greater.

Finding of prima facie obviousness Rational and Motivation
(MPEP 2142-2143)

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to follow the guidance of Hall, J. P. to arrive at the claimed invention.

One of ordinary skill would have been motivated to do this because Hall, J. P. has already suggested the use of a masking agent having a refractive index that matches the refractive index of the milled AACH for eliminating or reducing visible whitening. The viscosity of the masking agent is merely judicious selection and routine optimization, which would have been obvious for one of ordinary skilled in the art to try various masking agents having similar ranges of refractive index that match with the milled AACH, but different viscosity, and selected the desirable one, dependent on the chosen product.

From the teachings of the references one of ordinary skill in the art would have had a reasonable expectation of success to arrive at the claimed invention. Therefore, the invention as a

Art Unit: 1616

whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

No claims are allowed.

Contact Information

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the

Art Unit: 1616

PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/H. C./

Examiner, Art Unit 1616

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616